

REMARKS

Applicant wishes to commend Examiner Conley for an exceptionally detailed Office Action. The subject Action conveyed a thorough explanation of rejections and rationale therefor, and fairly and accurately indicated allowable subject matter and allowed two of applicant's claims as filed. Applicant does, however, respectfully take issue with respect to certain aspects of the Examiner's rejections as will be fully explained below, and earnestly solicits an affirmative reaction to this response, including allowance of all pending claims.

Regarding rejections based on 35 USC 112, 2nd paragraph

Claims 4 and 6 were rejected as indefinite by the Examiner under 35 USC 112, 2nd paragraph. In making this rejection, Examiner directed Applicant's attention to MPEP Sect. 2173.05(d). The basis for rejecting Claims 4 and 6 relates directly to Applicant's use of the term "wire-like." Examiner asserts that these claims, and claims dependent thereupon, as "indefinite because the claims include elements not actually disclosed...rendering the scope of the claims unascertainable...." In the rejection, Examiner appears to assert the term "wire-like" is not defined in the Summary of Invention nor the Detailed Description. Applicant respectfully points out, however, that the precise term is, in fact, explicitly included in the specification as filed, and appears in the Claims portion

of the original disclosure. Additionally, page 5 of the Detailed Description describes the panel means as including wire mesh material, and further notes that other meshed or woven and non-woven materials could be deployed including fibers and wooden strips. And, certainly, Figs. 2 and 3 of the original drawings clearly show the mesh to be defined by what is commonly known as wire or wire-like elements. Further, Applicant submits that this involves no more than a mere formality easily rectified.

To address this informality, the addition of the term “wire-like” to the descriptive portion of the specification (page 5 , lines 1 as amended) has been requested in this response. Applicant submits that this requested amendment does not constitute *new matter* since “wire-like” is a term already included within the specification, as filed

Further concerning the rejection of Claims 4 and 6, under 35 USC 112, Examiner appears to assert that the word “wire-like” is vague and nondescript. The Examiner’s rejection references *Manual of Patent Examining Procedure* section 2173.05(d), inferring that the word “wire-like” is of questionable definiteness similar to the phrase, “such as rock wool” citing, as precedent, *Ex parte Hall*, 82 USPQ 38 (Bd. App. 1949). If this is the case, Applicant respectfully disagrees and asserts that the word “wire-like” enjoys well-established meaning in the English language and with definite meaning in the mechanical arts, unlike the vaguely non-descript phrase, “such as rock wool.”

"Wire-like" (as well as the alternative yet essentially similar expressions "wirelike" and "wire like") is evidenced as solidly part of the industrial lexicon both outside and within the US Patent and Trademark Office (USPTO).

A computerized term search utilizing the USPTO's electronic, text-based search files, reveals that the word "wirelike" appears in at least 2,630 US patents since 1976. At least 612 of those occurrences are found within the Claims section of different patent grants. Applicant notes an example would be US Patent No. 4,999,166. Moreover, *Merriam-Webster's Collegiate Dictionary*, 10th Ed., 1998, p.1357, in the definition of the term "wire," refers to "wire-like" as an adjective specifically within the context of "something that is *wire-like*." Finally, and most significantly in Applicant's humble view, the USPTO's own *Class Definitions* employ the term "wirelike" in the official definitions of Classes 439, 366, and 281. Thus, in commonly defined English usage as well as in the lexicon of the patent practitioner and patent classifier, the term "wire-like" is notoriously well-established.

Thus, it is respectfully urged that the present objection to Applicant's use of the term *wire-like* be withdrawn, along with the withdrawal of the rejection of Claims 4 and 6. Further, it is earnestly requested that the objections to Claims 7 and 8 dependent upon rejected Claims 4 and 6 be withdrawn, as well.

Finally, and without prejudice to Applicant's position relative to use of the term "wire-like," it will become apparent to Examiner that new Claims 23 and 24 are offered herein for consideration as corresponding fully and directly to Claims 4 and 6, absent the subject term "wire-like." Since this rewriting of claims fully complies with one of Examiner's suggestions, the allowance of those Claims 23 and 24 is respectfully solicited, as well.

Regarding Rejections based on 35 USC 103 (a)

Claims 1, 5 and 9 are rejected under 35 USC 103(a) as being unpatentable over Ellis' published Patent Application 2003/0015513 (referred to hereafter as Ellis), considered in view of US Patent 4,854,501 to Ricci (referred to hereafter as Ricci).

Ellis' disclosed invention involves a warming, scenting and music playing cabinet for baby clothes/towels device. The published disclosure briefly mentions a "pocket" provided in the Ellis device for adding a fragrance such as baby powder or baby oil. A heater/blower unit is provided for circulating and re-circulating warmed air.

Ricci's patented fragrance sack is set forth as selectively scenting a surrounding area, and is disclosed as being placed, for example, on a closet shelf and in a drawer. Further, the fragrance sack taught by Ricci can be placed near stationery, linens, towels, and in clothes hampers to impart thereto a pleasant-smelling condition. Ricci notes that natural fragrances may be included in the fragrance sack, and specifically mentions rose petals or dried herbs.

Following the rationale of *Graham v. John Deere Co.*, 383 US 1, 148 USPQ 459 (1966), the Examiner arrives at the conclusion that modification of the Ellis' patented device by replacing the fragrance means of Ellis (namely, baby powder or baby oil) with "an alternative natural fragrance material such as rose petals or dried herbs as taught by Ricci would be obvious since both inventions are directed to conditioning articles of clothing in confined spaces." This conclusion is respectively traversed, as follows.

Applicant concedes that natural and artificial fragrances are notoriously well known additives in the conditioning of clothing, blankets, linens and the like in order to convey or transfer thereto a scent typically favored by humans as pleasant, or perhaps even to cover up perceived unpleasant odors. Consistent with such scent modification techniques, rose petals and dried herbs are well known among the myriad of typical scent-source materials that convey, impose or transfer a pleasant, though contextually unnatural fragrances. This, however, is in no way consistent with the context of conditioning hunting clothing and

related gear contemplated in Applicant's invention. In fact, conditioning clothing and gear to please humans is clearly contrary to the objectives of the present invention.

Both Ellis and Ricci, in their pursuit of pleasant scent modification clearly "teach away from" solving the challenges of a typical hunt. The type and purpose of scents applied through the modification taught by Ellis and Ricci, each considered alone or in combination, are among those to be studiously avoided in a hunt for wild game. Except for the fact that these references (namely Ellis and Ricci) and Applicant's claimed invention are generally related within a very broad context of scent concealment or modification, they are essentially non-analogous in their application. Beyond that, Applicant respectfully asserts that there are other differences in the device structures and process that serve to define patentable grounds for the claims at issue. The following remarks address these structural differences.

It would appear that the Examiner's rejection turns on the terse explanation of Ellis' "sidewall pocket 20 for adding a fragrance provider." Borrowing upon Applicant's terminology, the "pocket" is referred to in the Examiner's rejection as having a "panel." Structurally and functionally speaking, Ellis' drawing is of precious little help, if any, in defining this "panel." Ellis merely shows what appears as a schematic representation of an element having an apparently flat side and two corners, and wholly without further structural details.

How Ellis' element or "sidewall pocket 20" is connected or configured to relate to Ellis' "compartment" 18, is not apparent; nor is it known if, or how, the pocket 20 might be related or attached to a "compartment" wall. Moreover, it is not shown how Ellis' "sidewall pocket 20" functions to accept or hold "a fragrance provider, such as scented...powder and...lotion." Still further, it also is not clear from the Ellis disclosure how the element or "panel" of such pocket actually accommodates or relates to any compartment means that would hold the scent-modification material.

More specifically, and with direct reference to the claims, Ellis (and Ellis as modified in view of Ricci) fail to show (1) a panel that separates an article storage area from a scent-modification container and (2) a panel passage that permits scent-modification circulation to the articles being conditioned. In other words, there is no recitation of any structure that remotely relates to, or "reads" on the structure or function recited in Applicant's claims.

To clarify this important distinction, Applicant has herein offered amendments that characterize the claimed compartment as moveable. Clearly this distinction defines patentably over Ellis alone, and over Ellis as modified in view of Ricci.

Thus, Claim 1 and those claims dependent thereon, namely Claims 2-9, are now respectfully submitted as allowable over the prior art, and for the reasons stated

hereabove, reconsideration of the rejection of Claims 1, 5 and 9 is hereby requested.

Applicant's Affidavit Under 37 CFR 1.131

Without prejudice and without acquiescence to any aspect of the Examiner's rejection of Claims under 35 USC 103, Applicant is including herewith a signed affidavit establishing under 37 CFR 1.131 an actual date of reduction to practice of Applicant's invention prior to July 5, 2002. Thus, any references effectively dated on, or subsequent to, July 5, 2002, are removed from consideration as prior art by this Affidavit.

Presentation of this "swearing back" affidavit in no way implies admission that any reference antedated thereby would otherwise render Applicant's claims unpatentable (*Credle v. Bond*, 25 F.3d 1566, 30 USPQ 2d 1911 (Fed. Cir. 1994)).

Informality noted and corrected in original Claim 8

It will be readily apparent that Claim 8 inadvertently includes the word "and."

This is asserted as being an insignificant informality, and is being corrected by an amendment offered herein. Acceptance of this change is respectfully requested.

Discussion of New Claims

New Claim 12 and those new Claims dependent thereupon, namely, Claims 13-17, are patterned after original Claims 1-9, but very slightly broadened in some respects as described below and as warranted in light of the prior art.

Specifically, it will be noted that Claim 12 is patterned after Claim 1, but without inclusion of the descriptive term or environmental context of "hunting." Also, since Applicant's original description of the claimed container includes recitation that said container might be round or could assume other shapes, new Claim 12 is without limitations that define said container as having "at least four sides cooperating to define an inner space." Instead, less restrictive recitation has been included, namely: - - at least one side wall defining an inner space - -. The resultant structure now defined for Claim 12 (and for those Claims 13-17 dependent thereupon) clearly distinguishes from Ellis alone or Ellis in view of Ricci, for the reasons set forth above, and warrants favorable consideration.

New Claim 14 describes the panel as having a "mesh" material, absent the previously recited term "wire-like;" however, the subsequent Claim 15, introduces the "wire-like" limitation in the format of a Markush-type claim structure. For the

reasons set forth above, Applicant urges acceptance of the term "wire-like" inasmuch as said term has been demonstrated as well-established terminology, particularly in this mechanical context. Further, claim recitation in a Markush-type format is respectfully offered as an acceptable manner of describing structure permitting passage of scent-laden air flow. Again, Applicant respectfully requests favorable consideration of these claims and those dependent therefrom.

New Method Claim 18 is patterned after allowed Claims 10 and 11, but essentially mirrors changes suggested in new Claim 12. Specifically, recitation of unwarranted narrowing limitations related to hunting and natural scent have been avoided as un-necessary limitations in light of the prior art. This claim is submitted as deserving favorable consideration and allowance for the reasons recited hereabove.

Claims rewritten as suggested by Examiner

The Examiner indicated that Claims 4 and 6-8 would be allowable if rewritten to overcome the rejections(s) under 35 USC 112, second paragraph, and to include all the limitations of the base claim and any intervening claims. Further, Claims 2-3 were objected to (not rejected), and indicated by the Examiner as allowable if rewritten in independent form including all of the limitations of the base claim and

any intervening claims. The following is Applicant's compliant response to such suggestions.

New Claims 21-26 reflect Applicant's acceptance of Examiner's suggestions, and are presented without prejudice to consideration of the patentability of claims 2-4 and 6-8 as amended herein and argued hereabove.

New Claims 21 and 22 fully correspond to original Claims 2 and 3, respectively, with Claim 21 presented in independent form, and Claim 22 constructed as dependent upon Claim 21. Claims 21 and 22 are written to include all limitations of original Claims 2 and 3. Consequently, Applicant requests prompt allowance of new Claims 21 and 22.

New Claim 23 effectively rewrites original Claim 4, incorporating all its original limitations and those of parent Claims 1 and 2, with the exception of the removal or avoidance of the term "wire-like." Prompt allowance of Claim 23 is solicited.

New Claim 24 fully reflects Claim 6 as written in independent form, including all limitations of original Claim as well as those of Claims 1 and 5, with the exception of the removal or avoidance of "wire-like." Applicant thus has complied with the Examiner's suggestions and, accordingly, favorable consideration and prompt allowance of Claim 24 is requested.

New Claims 25 and 26 fully correspond to original Claims 7 and 8, incorporating all limitations of original Claims 7 and 8, and constructed as dependent from Claim 24. Thus, Claims 25 and 26 warrant positive consideration and their allowance is hereby requested.

Applicant is grateful for the Examiner's indication that these Claims 21-26 would be considered allowable if presented as shown. Again, allowance of these claims is respectfully requested.

Other Prior Art Made of Record, Not Applied

All prior art made of record and not applied in any rejection relative to pending claims has been closely reviewed by Applicant. Applicant agrees fully with the Examiner's assessment that the prior art, alone or in combination fails to teach the limitations of Claims 10 and 11. Moreover, no references of record anticipate or render obvious any of the claims as presently presented.

Miscellaneous Request by Applicant

Applicant respectfully requests the selection of Fig. 3 as the "Suggested Drawing Figure" depicted on the patent "front page" and selected for publication in the Official Gazette.

IN SUMMARY

The allowance of Claims 10 and 11 is gratefully acknowledged.

Applicant has offered a traverse relative to rejections of claims based on 35 USC 103 and 112, Second Paragraph.

Claims 21-26 are presented as fully comporting with Examiner's suggestions for rewriting Claims indicated as conditionally allowable.

Claims 1-9 and the specification have been suitably amended to overcome rejections under sections 112 and/or 103 of the US Code, and are earnestly solicited as now allowable.

Claims 12-20 newly presented herein are offered as allowable over all known prior art and for the reasons carried in Applicant's traverse.

Applicant offers for consideration an Affidavit under 37 CFR 1.131 along with evidence establishing full and complete reduction to practice of Applicant's invention prior to a date so specified.

Applicant suggests Fig. 3 as the drawing figure selected for display on any published Patent front page evolving from this application, and offers corrections of a number of minor typographical and housekeeping informalities.

Applicant submits all claims are now allowable and respectfully requests a second examination as afforded under the Rules of Practice, 37 CFR 1.111, along with prompt and favorable reconsideration and withdrawal of all outstanding objections and rejections of pending claims.

Respectfully submitted,

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Attachment: Affidavit Under 37 CFR 1.131 with Exhibits